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AOR  
1996-04

Federal Election Commission  
999 E Street NW  
Washington, DC 20463

2 February 1996

On behalf of Lyndon H. LaRouche, Jr. a Presidential Primary qualified candidate in the 1996 election cycle, I request an Advisory Opinion, under the provisions of 2 USC Sec. 437f and 11 CFR 112. I further request expedited reply to this request pursuant to 437 f (a) (2) of 11 CFR 112.4 (b) ( providing for 20- day reply rather than the usual 60 days) having fulfilled the requirements for such schedule :

(1) Mr. LaRouche is a qualified candidate in several elections occurring less than 60 days from now. i.e., the Presidential Primaries occurring on February 20, 1996 (New Hampshire); February 24 (Delaware); February 27 (Arizona (now also subject to court delay occasioned by the Democratic Party) and North Dakota); March 5, (Colorado, Maine, Maryland, Massachusetts, Rhode Island, Vermont); March 12 (Louisiana, Mississippi, Oklahoma, Texas) March 19 ( Illinois and Ohio); March 26 (California and Washington ); and April 2 (Kansas).

2) The subject of this request is a specific transaction or activity that the candidate wishes to undertake, which is directly related to these upcoming elections.

As you know, the Presidential Primary Matching Fund Account as maintained by the Secretary of the Treasury is faced with a shortfall of checkoff dollars and has held back a percentage of the entitlement to candidates' committees. The Treasury, as you know has refused full funding to qualified candidates in the primary, instead preferring to set aside funds for the political party conventions and General Election Financing. Payments to qualified candidates in the January 1996 payments were approximately 60% of entitlement. Disbursements of the second round, the February 1996 payment (which should include payment of the previously withheld 40%) is probably to be on the order of approximately 1% of the overall entitlement. The March rate is expected to be on the order of 3-8%, at best, of the total accumulated unpaid entitlement. It could be argued that this is tantamount to a suspension of the public funding program altogether.

Since it is recognized that this is due to the action of another agency - taken against the advice of the Commission - it is obvious that this rule was promulgated without due regard for injuries cause to the concept of public funding of these campaigns. It is obvious that the Treasury ignored the purposes envisioned in the enactment of the public financing provisions of the Act.

For a relatively small campaign, cutoff of matching fund entitlement is proportionately more destructive than for a large cash-rich campaign. This is in part because of financial " threshold" considerations, for example, minimum costs involved in media efforts - particularly crucial for early densely clustered primaries. TV time, for example is significantly more expensive than in previous election cycles: one nationally televised half-hour broadcast (my client's preferred method of addressing the issues) costs anywhere from \$290,000 to \$750,000 for broadcast time alone - not counting production and advertising costs. The costs of short spots, if aired at effective times and in sufficient markets to be relevant - can cost equally large sums. Additionally, most media purchased require funds in advance.

Unlike large campaigns, my client - staffed by largely volunteer labor, does not have the option of reducing -or -postponing other cash payment of salaries. My client does not have vendors willing to extend credit (such as multistate landlords willing to defer rent, of advertising agencies willing to defer payment for media purchases, consultants and direct mail marketers - whose patience for payment can be extended To my client these do not exist.

\*Admitted to practice in Michigan, Virginia, and District of Columbia

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As suggested in the Federal Election Commission RECORD, (Feb. 1995, p.2) the partial payments cause a cash flow problem in the early months of the campaign. As that article suggests candidates would make up the difference "with some form of bridge loans secured by the remaining entitlement" and repay those loans out of March and April payments.

My client's campaign is facing the predicted shortfall and would request an opinion on the following questions:

1) Can the candidate's withheld entitlement be directly assigned to the financial institution as assurance of repayment of such a "bridge loan"?

2) Can the campaign instruct the Treasury to issue matching fund payments directly to the lending institution, with such proof of assignment that can be furnished to the institution?

3) If the candidate should become ineligible for further matching payments under the provisions of Section 9033 (c)(1)(B) of Title 28, (the so-called 10% rule) is there any way to assure the financial institution of the repayment from those delayed payments from the Treasury? (Of course provided that the indebtedness were incurred for qualified campaign expenses prior to the date of ineligibility.)

4) Should my client's campaign be unsuccessful in obtaining a bridge loan from financial institutions as suggested in the RECORD we request an opinion of whether the Treasury receivable could be sold or transferred to the remaining surplus in Mr. LaRouche's 1992 presidential primary campaign? As we believe you are aware, the 1992 campaign has completed its audit, all public funds have been purged, there are no debts and there are no outstanding enforcement matters. Any sale or transfer would be subject to the same guarantees as would be provided to a bank or other lending institution in a similar loan.

It is therefore apparent the Treasury Department's method of dealing with the shortfall in public funding has the practical effect of undercutting the Congressional intent in the enactment of the Presidential Primary Matching Payment Account and the FECA in general, by reverting to the tremendous advantage given the incumbent and the "well financed" campaigns, to the detriment of the smaller, but legally qualified candidates whose voices the Act was intended to facilitate (and amplify).

Respectfully submitted

  
James F. Schoener